

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action Number 3:08cv709

JEAN CUNNINGHAM, *et al.*,

Defendants.

FINAL ORDER

This matter is before the Court on the parties' cross-motions for summary judgment. Having reviewed each motion separately on its own merits, and having considered the pleadings, the exhibits, and the arguments of counsel, the Court concludes that no genuine issue of material fact exists and that, viewing the facts in the light most favorable to Defendants, Plaintiff is entitled to judgment as a matter of law. Accordingly, for the reasons stated in the accompanying Memorandum Opinion, Plaintiff's motion for summary judgment is GRANTED as explained in the Memorandum Opinion, Plaintiff's request for declaratory relief is GRANTED, and Defendant's motion for summary judgment is DENIED.

The Court DECLARES that Defendants violated the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"), 42 U.S.C. § 1973ff-1 to 1973ff-6, by failing to mail timely-requested absentee ballots to UOCAVA voters thirty days or more before the November 4, 2008 general federal election. The Commonwealth of Virginia is ORDERED to count as validly-cast all timely-requested, but belatedly-mailed absentee ballots that were received by local electoral boards

and registrars within thirty days of the close of polls on November 4, 2008, so long as such ballots are otherwise valid under Virginia law. The Court DEFERS to the parties the decision as to how the Commonwealth of Virginia will go about counting and certifying the ballots, and the parties are ORDERED to memorialize in writing their agreed-upon procedure within twenty (20) days of the entry of this Order. The Commonwealth of Virginia will then have an additional ten (10) days to count and certify the ballots in accordance with that procedure.

The Court also DEFERS to the parties the determination as to the appropriate way in which to ensure Virginia's compliance with UOCAVA in future federal elections.

It is so ORDERED.

Let the Clerk send a copy of this Final Order and the accompanying Memorandum Opinion to all counsel of record.

October 15, 2009
DATE

_____/s/
RICHARD L. WILLIAMS
SENIOR UNITED STATES DISTRICT JUDGE